3 DILLON, MUNICIPAL CORPORATIONS, 1992. Moreover, the defendant's unauthorized construction of its poles and lines on a street or highway is a public nuisance. *Van Horne* v. *Newark P. Ry. Co.*, 48 N. J. Eq. 332, 21 Atl. 1034. And one suffering a pecuniary loss proximately resulting from a public nuisance may abate it in equity. *Griswold* v. *Brega*, 160 Ill. 490, 43 N. E. 864. Some courts have refused to grant an injunction because the plaintiff seeks to prevent competition. *Coffeyville M. & G. Co.* v. *Citizens' N. G. & M. Co.*, *supra; Baxter T. Co.* v. *Cherokee C. M. T. A.*, 94 Kan. 159, 146 Pac. 324. Public welfare especially requires that public utilities shall compete whenever conditions warrant it. *East St. L. Ry. Co.* v. *East St. L. U. Ry. Co.*, 108 Ill. 265. But free competition in the principal case would be subversive of the public interest, because adequate service there requires no duplication.

MALICIOUS PROSECUTION — CIVIL SUIT — ABSENCE OF ARREST OR SEIZURE. — In an action for malicious prosecution in a civil suit, where there had been neither arrest of the person of the plaintiff nor seizure of his property, *held*, that the plaintiff could recover. *Pearson* v. *Ashcraft Cotton Mills*, 78 S. W. 204 (Ala.).

Alabama, meeting this question for the first time, takes its place among the states allowing such recovery. The English rule, owing to the Statute of Marlbridge (52 HEN. III, c. 6), which allowed heavy costs *pro falso clamore* to the defendant in a civil action, denies such relief in a separate action for malicious prosecution. *Savile* v. *Roberts*, 1 Ld. Ray. 374. Formerly the weight of American authority was in accord with the English rule. *Wetmore* v. *Mellinger*, 64 Ia. 741, 18 N. W. 870; *Potts* v. *Imlay*, 4 N. J. L. 382. See cases cited in AMES'S and SMITH'S CASES ON TORTS, Pound's ed., 1917, 650. But now the weight of authority seems to have swung to the other side. *Kolka* v. *Jones*, 6 N. D. 461, 71 N. W. 558. On principle, American costs being meagre, the view of the principal case seems sound. The fear of multiplying litigation is without merit. To deny relief might often lead to persecution without remedy. See 9 HARV. L. REV. 538.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — CHARITABLE INSTITUTION. — An employee sued a purely charitable institution under the Act for injury by a buzz planer. The Massachusetts Workmen's Compensation Act in terms includes all employees, one clause specifically excepting farm laborers and domestic servants. MASS. STAT. 1911, c. 751, §§ 1, 2. *Held*, that charitable institutions are impliedly excepted. *Zoulalian* v. *New England Sanatorium & Benevolent Association*, 119 N. E. 686 (Mass.).

Charitable organizations are generally not liable for the negligence of servants or agents. *McDonald* v. *Mass. General Hospital*, 120 Mass. 432. In England the law is in some confusion as regards their liability at common law; hence a decision holding such an institution liable under the Act may not apply to the principal case. *MacGillivray* v. *Institute for The Blind*, 1911, S. C. 897, 48 Scot. L. R. 811. Public commissions managing essentially private or quasi-public enterprises have been held to come under the Act. *In re Ryan*, N. S. Wales St. Rep. 33; *Gilroy* v. *Makie*, 1909, S. C. 466, 46 Scot. L. R. But see *Brown* v. *Decatur*, 188 Ill. App. 147. The California Act specifically includes "the state . . . and all . . . having persons in service for hire." 1917 STAT. c. 2143, § 7. The Massachusetts court properly holds that the specific exemption of farm laborers and domestic servants does not necessarily imply that all other workmen are included. More doubtfully the court finds an implied exception in the general intent expressed in the law. The economic principle on which Workmen's Compensation Acts are often justified obviously would not apply to charitable institutions. Yet, as apparently in California, it may be thought that on humanitarian principles every enterprise should

bear its casualties. See BOHLEN, "Drafting of Workmen's Compensation Acts," 25 HARV. L. REV. 328, 329. In the setting of the Massachusetts Act, however, the decision seems sound.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — COMMON RISKS. — An employee working in a trunk factory was directed to go to the factory maintained by the same company on the opposite side of the street to letter a trunk. While returning, after he had completed his task, he slipped on the ice in the street and sustained fatal injuries. *Held*, that the accident arose out of his employment. *Redner* v. *H. C. Faber & Son Co.*, 119 N. E. 842 (N. Y.).

The greatest difficulty in determining whether an accident arises out of an employment is experienced in cases where the workman's injuries result from risks run by every one, yet in contact with which he is brought in the course of his employment. Most courts have applied the test that there must exist a frequency or peculiarity of subjection to the common risk to make the accident one arising out of the employment. *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K. B. 32; *Pierce* v. *Provident Clothing & Supply Co., Ltd.*, [1911] 1 K. B. 997; *Fensler* v. *Associated Supply Co.*, 1 Cal. I. A. C. Dec. 447. But what frequency or peculiarity is required has never been definitely established, and it is precisely this uncertainty that has caused such a hopeless conflict among the decisions involving the question. Late English and American decisions, however, have discarded this test and have adopted one more determinate in character. It suffices that the risk resulting in the accident was one which the workman incurred through his employment, and the fact that the risk was a common one also, avails nothing. *Dennis* v. *White & Co.*, [1917] A. C. 479; *Bett* v. *Hughes*, [1914] 52 Scot. L. Rep. 93; *Milwaukee* v. *Althoff*, 156 Wis. 68, 145 N. W. 238. This reasoning has been applied in the principal case. Since this criterion dispenses with the indefinite elements of "frequency" and "peculiarity," it is more certain and will cause much less confusion in the cases. See also 25 HARV. L. REV. 530–37.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — STATUTE PROVIDING EITHER COMPENSATION OR DAMAGES: WHEN RECOVERY AGAINST EMPLOYER IS NOT A BAR TO RECOVERY AGAINST NEGLIGENT THIRD PARTY. — Under Workmen's Compensation Act of Rhode Island an employee negligently injured by a third party may take action against him or the employer, but shall not recover both damages and compensation. LAWS, 1912, c. 831, art. 3, 21. A written agreement for compensation was, in accordance with the act, filed and approved in the Superior Court. The employee now sues the tortfeasor in accordance with an agreement with his employer providing that the employee should, out of the money thus recovered, repay the employer the sums advanced for compensation. Did receipt of compensation under these circumstances bar recovery against the tortfeasor? *Held*, it did not. *Mingo* v. *Rhode Island Co.*, 103 Atl. 965 (R. I.).

The case has apparently no American precedents. Under the English Act of 1897, repealed by that of 1906, an employee might at his option proceed against either employer or tortfeasor, but not both. 60 & 61 VICT. c. 37. Under this act an agreement to take compensation "without prejudice" did not bar action against the tortfeasor. *Oliver* v. *Nautilus Steam Shipping Co.*, [1903] 2 K. B. 639, 19 T. L. R. 607. Under the English Act of 1906 an employee may "take proceeding" against both parties, but is entitled to but one recovery. 6 EDW. VII. c. 58. Under this act an agreement to refund compensation on subsequent recovery from the tortfeasor was not such "recovery" as to bar action. *Wright* v. *Lindsay and Others*, [1912] S. C. 189, 49 Scot. L. R. 210. The Rhode Island statute has similar provision to the later English act, and ex-